92-1712

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

* * *

NO. _____

* * *

GARRY D. WIGGINS,

Petitioner

V.

RAUL JOSE VALENCIA,

Respondent

* * *

Supplemental Appendix to Petition for Writ of Certiorari To The United States Court of Appeals For the Fifth Circuit

* * *

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Garry D. Wiggins

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

RAUL JOSE VALENCIA	§	
	§	
V.	§	P-89-CA-039
	§	
GARRY D. WIGGINS, ET AL.	§	

JUDGMENT

BEFORE THIS COURT came the parties for trial on the merits on Plaintiff's suit alleging excessive force against a pretrial detainee in violation of Title 42, United States Code, Section 1983. All jurisdictional prerequisites necessary to the maintenance of Plaintiff Valencia's claims were met. This Court issued its Findings of Fact and Conclusions of Law by separate memorandum opinion this day. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED Plaintiff Raul Valencia should recover of and from the [sic] Garry Wiggins the sum of $2500.00. Interest on

the Judgment in the amount of 7.95% shall accrue from July 17, 1990 until the date the Judgment is paid.

Costs of Court are assessed against the Defendant. Let execution issue if not timely paid.

Judgment for attorney's fees shall be handled by separate Judgment. Plaintiff shall file a brief with this Court in support of entitlement to attorney's fees and accompany such request with an affidavit following the criteria set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).

SIGNED the 13th day of September, 1990.

LUCIUS D. BUNTON,
CHIEF JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

RAUL JOSE VALENCIA	§	
	§	
V.	§	P-89-CA-039
	§	
GARRY D. WIGGINS, ET AL.	§	

ORDER

BEFORE THIS COURT came to be considered the Motion of Defendants Raymundo Ramos and Pat L. Henderson to Alter or Amend Judgment and for Hearing on Rule 11 Claims in the above-captioned cause. The Court in its Memorandum Opinion and Order dated September 14, 1990, failed to formally dismiss the claims against Ramos and Henderson, although the claims against them were orally dismissed from the bench. Upon consideration of the Motion and Response of Plaintiff Raul Valencia, this Court is of the opinion the Motion to Alter or Amend Judgment should

be GRANTED and the Claims against Raymundo Ramos and Pat L. Henderson should be DISMISSED.

Defendants Ramos and Henderson also request the Court rule on their Rule 11 claim against Valencia. In the final judgment, the Court denied the Rule 11 Motions of Brewster County Judge Tom Connor, Brewster County Attorney Val Beard, and former District Attorney Phil Pollan because the Plaintiff moved to dismiss these claims prior to trial. The claims against Ramos and Henderson were not, however, dismissed by the Plaintiff prior to trial, but were adjudicated along with Garry Wiggins, Sheriff Jones, and Brewster County. This Court is of the opinion the Plaintiff should not be penalized through the imposition of sanctions, for proceeding against Ramos and Henderson, just because the case against them did not prevail on the merits. Defendants were

involved in the events leading up to Valencia's recovery against Wiggins, and there was sufficient evidence to meet the Rule 11 standards. Therefore, the Motion for Imposition of Rule 11 Claims of Defendants Ramos and Henderson is DENIED. Accordingly,

IT IS ORDERED the motion of the Defendants Raymundo Ramos and Pat L. Henderson to Alter or Amend Judgment is hereby GRANTED and the claims of Plaintiff Raul Valencia against Ramos and Henderson are hereby DISMISSED.

IT IS FURTHER ORDERED this Court's Judgment on September 14, 1990 be amended to include the above.

SIGNED this 16th day of November, 1990.

LUCIUS D. BUNTON,
CHIEF JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

RAUL JOSE VALENCIA	§	
	§	
V.	§	P-89-CA-039
	§	
GARRY D. WIGGINS, ET AL.	§	

MEMORANDUM OPINION AND ORDER

BEFORE THIS COURT came the parties for trial on the merits on Plaintiff's suit alleging excessive force under Title 42 United States Code § 1983 et seq.

All jurisdictional prerequisites necessary to the maintenance of Plaintiff's claims have been fulfilled. Having heard the evidence adduced by both parties at trial, this court now enters its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff Raul Valencia was committed to the Brewster County Jail on July 3, 1987. Like many other

inmates in the jail, including both of those who testified on Valencia's behalf in this matter, Gilbert "Bebo" Espinosa and Robert Lee Smith, Valencia was arrested on drug charges as a result of an undercover operation conducted by Defendant Garry Wiggins.

2. Defendant Garry Wiggins was hired by the Brewster County Sheriff's Office on December 30, 1986. The background investigation conducted by Sheriff George Jones was, although not exemplary, adequate. Jones made telephonic inquiries of Defendant Wiggins's prior employer and was not given any negative information.

3. After Wiggins's completion of service as an undercover narcotics officer, Wiggins began work as a Brewster County Deputy Sheriff and, in July, 1987, was acting Chief Deputy.

4. On the evening of July 23, 1987 Valencia was involved in a disturbance in the jail involving excessive noise and the throwing of objects out of cells.

5. On the morning of July 24, 1987 Valencia was told to report to sick call to be taken to see a doctor. Upon reporting, Valencia was confronted by Wiggins who sought to place him in handcuffs and leg restraints. Valencia was afraid of Wiggins and did not want Wiggins to escort him to the doctor. Both parties became verbally abusive toward the other, this erupted into a shouting match between the two. Valencia told Wiggins he did not want to be "chained like an animal" during a visit to the doctor. Valencia was disciplined and lost jail privileges as a result of these two incidents.

6. On the evening of July 24, 1987, the inmates of the jail were creating a disturbance, involving singing

and other noises. Jailer Joaquin Jackson requested the inmates to quiet down. When the inmates refused, Jackson summoned Wiggins. The Court finds Wiggins should not have been summoned to deal with this disturbance by inmates he had arrested.

7. At approximately 6:00 o'clock p.m., Wiggins arrived at the jail. Wiggins heard noise emanating from the jail and ordered the inmates to quiet down. Most of them did, but Valencia and Espinosa did not. Wiggins then told Valencia to get out of his cell because he wouldn't stop making noise. The court further finds Valencia refused to come out of the cell and asked why he was being singled out.

8. Wiggins then entered the cell to enforce his order. A wrestling match ensued during which Wiggins hit Valencia's head against the jail bars and applied a "choke hold" rendering Valencia momentarily

unconscious. The court finds the methods used by Wiggins to enforce jail discipline to be unreasonable and clearly excessive.

9. After Valencia was taken to the floor and handcuffed, he was taken downstairs to the drunk tank. Wiggins went into the drunk tank with Valencia and shut the door behind them. Wiggins then struck Valencia while he was cuffed and on his knees at least three times. The Court finds Valencia did not require medical attention for the bruises to the face and the scratches and cuts to his throat, but the injuries were severe to Valencia. At the time of these incidents, Valencia was a pre-trial detainee.

10. The next morning Valencia spoke with Ray Ramos another jailer. Ramos moved Valencia to a different cell. In order to do so, he moved another inmate into Valencia's original cell.

11. While upstairs, Ramos was told by Bebo Espinosa, Valencia had been assaulted by Wiggins in the drunk tank. Ramos asked Valencia about this and Valencia stated he had just been joking and he did not know why he was trying to act like such a tough guy. The Court finds Valencia made these statements to Ramos because he was afraid if he complained, Wiggins would beat him further. Valencia also stated he wanted to apologize to jailer Jackson and Wiggins.

12. Valencia was transported to Pecos on Sunday, July 26, 1987 by Deputy Pat Henderson and Wiggins. There was insufficient room for him at the County Jail and he was transferred to the Law Enforcement Center ("LEC") in Pecos, Texas where he was admitted.

13. The interviewing jailer at the LEC noted Valencia's injuries consisted of scratches and bruises, but nothing requiring immediate medical care.

14. Several days later Valencia was visited by Attorney Rod Ponton who noticed the bruises and scratches.

15. Valencia alleges he sustained permanent damage to his voice because of the "choke hold," but the testimony of the [sic] Valencia's cousin Pete Gallego contradicted this. The Court finds Valencia did not require medical attention as a result of the abuse of the [sic] Wiggins.

16. Raul Valencia suffered a significant injury and damages in the amount of $2500.00 as a result of Wiggins's unlawful conduct.

CONCLUSIONS OF LAW

1. The Cruel and Unusual Punishments Clause "was designed to protect those convicted of crimes," and consequently the Clause applies "only after the State has complied with the constitutional guarantees

traditionally associated with criminal prosecutions." Huguet v. Barnett, 900 F.2d 838, 840 (5th Cir. 1990), quoting, Ingraham v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977). In order for a Plaintiff to prevail, on an Eighth Amendment excessive force claim, these four elements must be proven:

> 1. A significant injury, which
> 2. resulted directly and only from the use of force that was clearly excessive to the need, the excessiveness of which was
> 3. objectively unreasonable, and
> 4. the action constituted an unnecessary and wanton infliction of pain.

Huguet v. Barnett, 900 F.2d at 841. The first three elements should be examined objectively, focusing solely on the injury, the situation and the force needed; once these are proven the analysis shifts to a subjective analysis of the officer and his state of mind to determine whether the action constituted an unnecessary and wanton infliction of pain. Id.; Whitley v. Albers,

475 U.S. 312, 106 S.Ct. 1078, 1085, 89 L.Ed.2d 251 (1986). Plaintiff has the burden of proof with regard to the four issues, and if he fails on any one, so too does his case. Huguet v. Barnett, 900 F.2d at 841.

2. Pre-trial detainees, as opposed to convicted prisoners, are those individuals who have been charged with a crime but who have not yet been tried on the charge. Bell v. Wolfish, 441 U.S. 520, 523, 99 S.Ct. 1861, 1865, 60 L.Ed.2d 447 (1979). This distinction is highlighted because the Due Process Clause of the Fourteenth Amendment accords pre-trial detainees rights not enjoyed by convicted inmates under the Eighth Amendment prohibition against cruel and unusual punishment. Jones v. Diamond, 636 F.2d 1364, 1368 (5th Cir. 1981) (en banc), overruled on other grounds, 790 F.2d 1174 (1986). Specifically, "while a sentenced inmate may be punished in any

fashion not cruel and unusual, the Due Process Clause forbids punishment of a person held in custody awaiting trial but not yet adjudged guilty of any crime." Id. In Bell v. Wolfish, the Supreme Court determined, as to pretrial detainees, the proper inquiry under the Due Process Claus is whether conditions accompanying pre-trial detention are imposed upon detainees for the purpose of punishment, as the Due Process Clause does not permit punishment prior to adjudication of guilt. Bell, 441 U.S. at 535, 99 S.Ct. at 1871.

2. Contrasting the above with arrest situations;

> [A]ll claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop or other "seizure" of a free citizen should be analyzed under the Fourth Amendment and its "reasonableness" standard, rather than under a "substantive due process" approach. Because the Fourth Amendment provides an explicit textual source of constitutional protection against this

> sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims.

Graham v. Connor, 490 U.S. ____, 109 S.Ct. 1865, 104 L.Ed.2d 443, 454 (1989). In order to prevail on a claim of excessive force in an arrest setting under Title 42 United States Code, Section 1983, Valencia must prove he suffered a significant injury which resulted directly and only from the use of force clearly excessive to the need and objectively unreasonable. Id. and Johnson v. Morel, 876 F.2d 477, 480 (5th Cir. 1989) (en banc). The dicta in Graham, however, indicates the Supreme Court has not clearly held whether the Fourth Amendment should be applied to excessive force cases involving pre-trial detainees; however, once an arrest has been effectuated "it is clear . . . the Due Process Clause protects a pre-trial

detainee from the use of excessive force that amounts to punishment." Graham v. Connor, 109 S.Ct. at 1871, 104 L.Ed.2d at 455. Defendant contends this Court may not find for Plaintiff Valencia because he cannot fulfill his burden of proof on the significant injury element, thus his entire claim must fall. The standards governing excessive force claims under the Fourth and Eighth Amendments are identical in every respect, and require a finding of significant injury before a Plaintiff may proceed with his case. This Court finds however the less stringent Fourteenth Amendment Due Process Standard should be applied to these facts, although some review of Fourth and Eighth Amendment case law will be necessary.

3. In order to prevail on a claim of summary punishment, Valencia must show the force used against him amounted to punishment. Further it was not

imposed in the context of an arrest or for security or other appropriate reasons. Bell v. Wolfish, 441 U.S. at 536, 99 S.Ct. at 1871-2. Once the Plaintiff has done so the Defendant is liable for injury proximately caused by such punishment since there is no right to punish a prisoner without appropriate Due Process. Id. "[I]f the state officer's actions caused severe injuries, was grossly disproportionate to the need for action under the circumstances, and was inspired by malice rather than merely careless or unwise excess of zeal so that it amounted to an abuse of official power that shocks the conscience, it should be redressed under Section 1983." Brown v. Glossip, 878 F.2d 871, 873 (5th Cir.1989), quoting Shillingford v. Holmes, 634 F.2d 263, 265 (5th Cir. 1981). The Court should also determine whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the

purpose of causing harm. Whitley v. Albers, 475 U.S. 312, 320-321, 106 S.Ct. 1078, 89 L.Ed.2d 251, 261 (1986).

4. If an inmate refuses to cease a disturbance and refuses to leave his cell when ordered to do so, reasonable force may be used to move the inmate causing the disturbance. However, the use of a potentially lethal choke hold, City of Los Angeles v. Lyons, 461 U.S. 95, 100, 113 (1983) and other force to subdue a non-resisting inmate, and render him temporarily unconscious, is excessive use of force in the context of this case. Bell v. Wolfish, 441 U.S. at 535, 99 S.Ct. at 1871; Whitley v. Albers, 475 U.S. at 320-321, 89 L.Ed.2d at 261. Likewise, Wiggins's infliction of force in the drunk tank on a handcuffed and non-resisting Valencia was for no other purpose than to punish him prior to any adjudication of wrong

doing was clearly excessive and was not in good faith. Block v. Rutherford, 468 U.S. 576, 583, 104 S.Ct. 3227, 82 L.Ed.2d 438, 445 (1984). Wiggins's actions were excessive, maliciously and sadistically applied, and Wiggins "clearly crossed the constitutional line making this abuse actionable under Section 1983." Shillingford v. Holmes, 634 F.2d at 265.

5. The Court further finds Valencia's injuries were severe under the Shillingford standard, although he did not require medical attention, and might not merit a recovery under the Fourth or Eighth Amendments. The Court makes this finding even noting the dicta in Johnson v. Morel, 876 F.2d at 480, n.1., which states it is unlikely a significant injury by Fourth Amendment standards will be caused by unnecessary force without a significant physical injury, but leaves that finding open for another case. This Court makes this finding

because this action was inspired by malice, and grossly disproportionate under the circumstances, so as to amount to an abuse of official power which shocks the conscience. Stevens v. Corbell, 832 F.2d 884, 889 (5th Cir. 1987) rehearing en banc denied, 838 F.2d 1214 (5th Cir. 1987), citing, Hendrix v. Matlock, 782 F.2d 1273, 1274 (5th Cir. 1986).

7. Under the circumstances of this case, Wiggins is not entitled to qualified immunity. Stevens v. Corbell, 832 F.2d at 890. The claims brought by Valencia against former Sheriff George Jones and Brewster County are dismissed upon Defendants' Motion for Involuntary Dismissal, Rule 41(b), Federal Rules of Civil Procedure, because Valencia failed to produce sufficient evidence any custom or policy of Brewster County or George Jones was the moving force

behind the use of any excessive force by Garry Wiggins.

8. The claims against Brewster County Judge Tom Connor, Brewster County Attorney Val Beard, and former District Attorney Phil Pollan were filed by the Plaintiff while proceeding pro se. After counsel was retained, the Plaintiff moved to dismiss the claims against these Defendants, because of their absolute immunity. The claims against these Defendants were properly dismissed by this Court, and the Court is of the opinion Rule 11 sanctions should not be rendered against this Plaintiff. Accordingly the following Order is appropriate

IT IS ORDERED the Plaintiff Raul Valencia, have and recover of and from Garry Wiggins the amount of $2500. Interest on the Judgment in the amount of

7.95% shall accrue from July 17, 1990 until the date the Judgment is paid.

A separate Judgment shall issue in this matter.

All relief requested and not expressly granted is hereby and in all things denied.

SIGNED the 12th day of September, 1990.

LUCIUS D. BUNTON,
CHIEF JUDGE